

April 14 1942

Hon. William Kimball  
Senator  
First Special Session  
Fifteenth Legislature  
State House  
Phoenix, Arizona

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## ARIZONA ATTORNEY GENERAL

Dear Senator Kimball:

We are in receipt of your letter of April 13, 1942 in which you ask in part:

"I will appreciate an opinion at your earliest convenience as to the status of the appointments before the Senate at this time, and whether or not the names of both McBride and Rogers are before the Senate for action, and if not, which, if either of them, is before the Senate for action."

It appears from correspondence between Governor Sidney P. Osborn and Mr. Paul C. Keefe, President of the Senate, that on March 11, 1941, the name of Mr. I. Perle McBride was submitted to the Arizona State Senate for confirmation, as follows:

"March  
Eleventh  
1941

Honorable Paul C. Keefe  
President of the Senate  
Fifteenth Legislature  
Phoenix, Arizona

My dear Mr. President:

I have today named I. Perle McBride, of Pima County, as a Member of the Industrial Commission for the term commencing on the 8th day of January, 1942, and ending on the 8th day of January, 1948, and herewith submit his name to your Honorable Body for confirmation.

Sincerely,

SIDNEY P. OSBORN  
Governor

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Hon. William Kimball

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You state in your letter that the name of Mr. McBride was transmitted during the closing days of the Regular Session and that the session was concluded before any action was taken on this appointment. We therefore conclude that Mr. McBride's appointment was neither approved nor rejected.

We also have a copy of a letter from Governor Osborn to Mr. Paul C. Keefe, President of the Senate, in which the governor attempts to cancel the appointment of Mr. McBride as of the hour of 9:30 A.M., Tuesday, April 7, 1942, and name Mr. C.E. Rogers as a member of the Industrial Commission and asking his confirmation of the Senate, which letter is as follows:

"April  
Seventh  
1942

Honorable Paul C. Keefe  
President  
and  
Members of the State Senate  
Fifteenth Legislature, First Special Session  
State House

Gentlemen:

On March 11, 1941, I submitted to your honorable body the name of I. Perle McBride for confirmation as a member of the Industrial Commission for the term commencing on the eighth day of January 1942, and ending on the eighth day of January, 1943.

The name was submitted for the reason that there would be an expiration of a term of a member of the Industrial Commission before the meeting of the next Regular Session of the Legislature, and the fact that under decisions of the Supreme Court an appointee to the Industrial Commission cannot assume the duties of the office until first confirmed by the State Senate. This had been pointed out by the court and the appointive power admonished, in such circumstances, to send the name of such appointees to the Senate for confirmation at the regular session of the legislature preceding the expiration of such terms.

Although the above mentioned name was sent to the last Senate on March 11, 1941, and the Senate remained in session until March 17th, no action was taken.

Hon. William Kimball

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April 14, 1942.

In order to clear the situation, and in the interest of harmony, I have at this hour of 9:30 A.M., Tuesday, April 7, 1942, cancelled the appointment of I. Perle McBride to be a member of the Industrial Commission and withdraw his name from consideration by your honorable body, and have today named C.E. Rogers, of Yavapai County, as member of the Industrial Commission for the term expiring on the 31st day of January, 1948, and hereby submit his name to you and ask for confirmation.

Sincerely,  
(Signed) SIDNEY P. OSBORN  
Governor."

Section 58-901 of the Arizona Code annotated, 1939, as pertains to the appointment of members of the Industrial Commission reads as follows:

"There is created the Industrial Commission of Arizona, to be composed of three (3) Members to be appointed by the Governor, by and with the advice of the Senate, for the term of six (6) years \* \* \*."

It is apparent from this section of the statute that neither the Governor nor the Senate may alone appoint any member to the Industrial Commission of Arizona. Each appointment must be made, first, by appointment of the Governor and, secondly, only with the consent of the Senate.

In the case of McCall vs. Cull, 51 Ariz. 237, 246; 75 Pac. (2d) 696, 700, and reiterated in Graham v. Lockhart, 53 Ariz. 531 at 538, the Supreme Court of our State said:

"The power exists in the Governor and the Senate jointly to appoint and confirm a member of the live stock sanitary board, and under the facts of this case such power could have been exercised at any time after January 5, 1936, since on that date the Hunt term ended. The Legislature was in a regular and three special sessions during 1937, and at any of such sessions, no doubt, the Senate would have concurred in plaintiff's selection by the Governor to such office. The Legislature has made such concurrence necessary to a valid appointment to a regular term as fixed by the statute, and, as it has not been obtained, plaintiff is not entitled to the possession of the office."

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In the matter before us, the Governor has seen fit to submit the names of two men for approval by the Senate. The first name, that of Mr. McBride was not passed upon at the Regular Session and was still before the Senate at the commencement of the First Special Session and could have been acted upon the first hour of this special session.

The Governor later, as he stated, "for the sake of harmony" attempted to withdraw the name of McBride and submitted the name of Mr. Rogers for confirmation. Under the laws of Arizona we are unable to find any authority for the withdrawal or cancellation of a name once it is submitted to the Senate for confirmation or rejection until that body has passed upon the name of the person appointed.

Neither do we find any law or authority to the effect that the Governor may not name more than one person of his choice for the confirmation or rejection of the Senate.

It is true that the Governor and the Senate must concur and agree on one person, but if the Governor appoints two or more persons it is certainly with his consent if the Senate in its wisdom chooses to confirm either.

This matter is of such vital importance, not only to the individuals concerned, but to the State of Arizona, that, regardless of what opinion we render or what action the Senate takes, it no doubt, will be carried to the Supreme Court for final determination.

Due to the fact that we have been unable to find any cases squarely in point on this proposition, and in fairness to the Governor, the Senate, the people of Arizona and the two vitally interested parties, and for the reasons above set forth, it is our opinion that the Governor of Arizona has regularly appointed both Mr. McBride and Mr. Rogers to membership on the Industrial Commission; that the names of both men are now properly before the Senate; that the Senate may legally confirm either and that upon confirmation, that person will have met the necessary legal requirements under the laws of the State of Arizona.

Respectfully submitted,

JOE CONWAY  
Attorney General

EARL ANDERSON  
Special Assistant  
Attorney General.

W.E. POLLEY  
Assistant Attorney General